

REMARKS

The claims have been amended to more clearly define the invention as disclosed in the written description. In particular, claim 2 has been cancelled, while claims 1, 8 and 9 have been amended to include the limitations of cancelled claim 2. In addition, the claims have been amended for clarity. Further, new claims 11-13 have been added and claim additional features of the invention.

Applicants believe that the above changers answer the Examiner's objection to claim 8, and respectfully request withdrawal thereof.

The Examiner has rejected claim 10 under 35 U.S.C. 101, in that the claimed invention is directed to non-statutory subject matter.

Applicants acknowledge that the computer program of claim 10 is functional descriptive material which, according to MPEP § 2106.01, is non-statutory when claimed per se. However, when such "functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized."

Applicants submit that claim 10 now claims "A computer-readable medium having recorded thereon a computer program...." As such, Applicants believe that claim 10 is now statutory.

The Examiner has rejected claims 1, 3-5 and 8-10 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,850,469 to Ogawa et al. The Examiner has further rejected claims 1-10 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,002,655 to Ono et al. in view of U.S. Patent 5,878,002 to Takahashi.

In view of the above changes, Applicants believe that the Examiner's 35 U.S.C. 102(e) rejection has been overcome.

The Ono et al. patent discloses a dual layer disc in which one layer is scanned from inner most circumference to outer most circumference of the disc, while the other layer is scanned from the outer most circumference to the inner most circumference. A method is described for a high speed movement to a target sector. It should be noted that Ono et al. does not disclose defect management areas at all.

The Takahashi patent discloses, in Fig. 4, a read/write double-layered optical disc (col. 6, lines 62-64). According to col. 7, lines 18-19, a data area is formed on layer 10 or 90, and a replacement/management area (the replacement area is interpreted as the DMA) is formed on layer 90. Thus, the teaching of Takahashi is that the DMA's are present on only one of the layers.

Takahashi further discloses, at col. 7, lines 31-33, that the "replacement/management area is arranged on the inner site of each data area". In the context of col. 7, lines 18-19, this should be understood as meaning that on layer 90, a replacement/management area is arranged on the inner site of each data area. There is no replacement/management area on layer 10.

Thus, Applicants submit that Takahashi neither discloses nor suggests applying the DMA's of Takahashi on both layers of Ono et al. Rather, if the teaching of Takahashi is implemented on Ono et al., one of the layers will be selected to contain the DMA's. If, nevertheless, the skilled person would implement DMA's on both layers, it is not at all evident that the DMA's would be present at different radial positions. It is well known to have the DMA's at the same radial positions (see as an example Ogawa et al.).

Applicants submit that the Examiner seems to be using hindsight reasoning, i.e., only when knowing the present invention, the skilled person might be prompted to put the DMA's on both layers with a radial offset. There is no hint in Takahashi which directly and unambiguously directs the skilled person to adapt the Ono et al. approach to the claimed approach.

The invention as claimed in claim 11 includes the limitation "wherein the controller controls the positioning circuit to move the light beam from an error area in one of the data areas to a nearest one of the defect management areas, said nearest one of the defect management areas being located on another layer of the optical disc".

Applicants submit that this limitation is not disclosed in Takahashi. It is essential, in Takahashi, that the DMA is selected in the area which has the same speed as exists on the actual radial position, even if the distance of the actual radial position to another DMA (in a different speed area) is shorter.

In view of the above, Applicants believe that the subject invention, as claimed, is neither anticipated nor rendered obvious by the prior art, either individually or collectively, and as such, is patentable thereover.

Applicants believe that this application, containing claims 1 and 3-13, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

by /Edward W. Goodman/
Edward W. Goodman, Reg. 28,613
Attorney
Tel.: 914-333-9611